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Phone No. 513-634-3400

Application No.: 10/621,709

Inventor(s): Karapasha

Filed: July 17, 2003

Docket No.: 9330

Confirmation No.: 1538

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.	:	10/621,709
Applicant(s)	:	Karapasha
Filed	:	07/17/2003
Title	:	Applicator Having an Indented Fingergrip with Raised Portions
TC/A.U.	:	3761
Examiner	:	Hill
Conf. No.	:	1538
Docket No.	:	9330
Customer No.	:	27752

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450
Dear Sir,

This Amended Appeal Brief is filed in response to the Notification of Non-Compliant Appeal Brief of December 7, 2005. The Summary of Claimed Subject Matter section has been amended to include references to the Specification by page and line number and to the drawings by reference numbers. The Appeal Brief was filed pursuant to the appeal from the U.S. Patent and Trademark Final Office Action of August 22, 2005. A timely Notice of Appeal was filed on September 22, 2005.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

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RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1-20 are pending in the present application.

Claims 1-20 are rejected.

Claims 1-20 are appealed.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

No amendments are presented.

SUMMARY OF CLAIMED SUBJECT MATTER

The present invention is directed to a tampon applicator 10 (Spec. Page 3, Lines 27-28). The tampon applicator 10 comprises an insertion member 20 (Spec. Page 3, Line 28). The insertion member 20 is adapted to house a tampon and to receive the plunger 22 (Spec. Page 3, Lines 28-29). The insertion member 20 has an outer surface 24 and a fingergrip region 26 disposed about the outer surface 24. The fingergrip region 26 comprises an indentation region 28 having a depth dimension X. The indentation region 28 comprises raised portions 30 having a height dimension Y. (Spec. Page 3, Lines 29-32) The height dimension Y of the raised portions 30 is less than (claim 9) or equal (claims 1 and 15) to the depth dimension X of the indentation region 28.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-20 have been rejected under 35 USC § 102(b) as being anticipated by *Campion et al.* (US 5,346,468).

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ARGUMENTS

Claims 1-20

Claims 1-20 have been rejected under 35 USC § 102(b) as being anticipated by Campion et al. (US 5,346,468). This rejection is traversed for numerous reasons.

Campion et al. discloses a tampon applicator having embossed rings (18) with slight depressions (21) formed on either side of the embossed rings. In the Office Action the depressions (21) are considered equivalent to the claimed indentation region while the embossed rings (18) are considered equivalent to the claimed raised portions.

First, independent Claims 1, 9 and 15 each require that the indentation region comprise raised portions. That is, the indentation region comprises multiple raised portions and not a single raised portion. Even if one accepts the Examiners interpretation of Campion et al. with respect to the dimensions of the indentation and raised portion (which the appellant does not), Campion et al. fails to disclose multiple raised portions within the indentation region. Campion et al. only discloses a single raised portion 18 within the alleged indentation region. Thus, Campion et al fails to anticipate independent Claims 1, 9 and 15.

Second, the Office Action has taken a rather unique interpretation of Campion et al. in order to create its' anticipation rejection. That is, the Office Action is using the raised portion 18 of Campion et al. as part of the X dimension of the indentation region. If one were to accept the unique interpretation of the Office Action then the Appellants own invention as shown in Figure 1 would be outside of the claim scope. That is, the X dimension of the indentation region would always be less than the Y dimension of the raised portion. Clearly this unique interpretation cannot be correct.

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Appellants have set forth below a revised drawing of Fig. 1 to illustrate how one would measure the X dimension according to the Office Action's unique interpretation. As can be seen from the revised drawing, the X dimension is considerably less than the Y dimension.

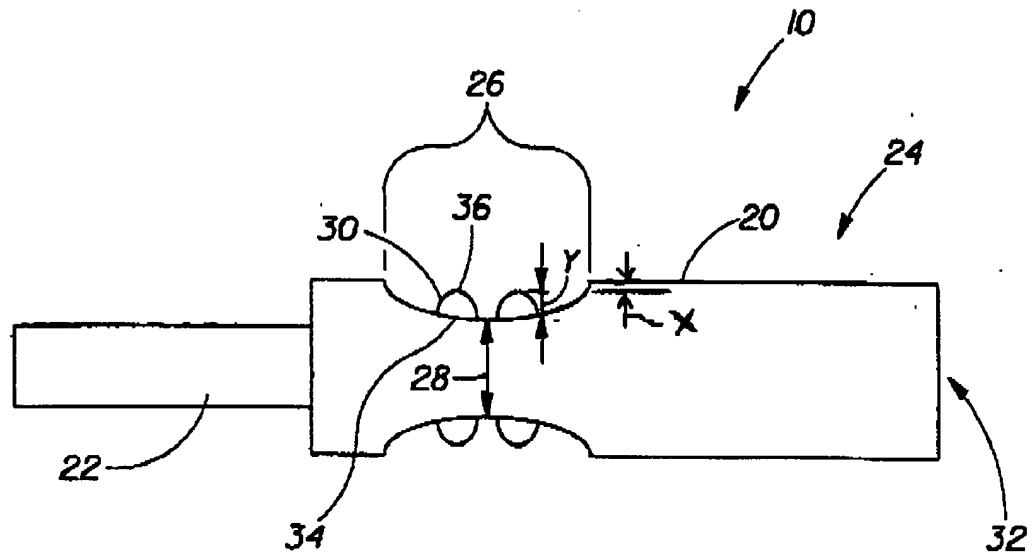


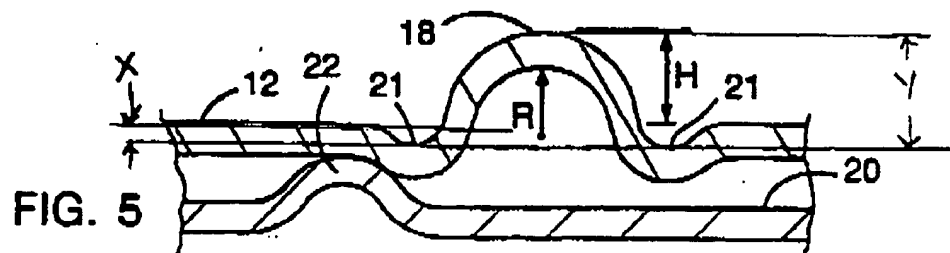
Fig. 1

(Revised)

It is the Appellant's position that the interpretation proffered by the Office Action is incorrect and should be ignored. Thus, *Campion et al.* fails to anticipate independent claims 1, 9 and 15.

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Third, a correct reading of *Campion et al.* clearly shows that *Campion et al.* fails to anticipate independent Claims 1, 9 and 15. The depth dimension X of the depressions (21) is to be taken from the outer surface of the insertion member 12 to the lowest point of the indentation region. See page 5, lines 29-31 of the specification. The height dimension Y is to be taken from its' base to the highest point of the individual raised portion. See page 6, lines 8-11 of the specification. As can be seen from the reproduced Fig. 5 of *Campion et al.* below, *Campion et al.* clearly teaches a structure in which Y is considerably larger than X. Such a structure does not anticipate independent claims 1, 9 and 15 of the appellants' invention which require height dimension Y to be less than or equal to depth dimension X.



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With respect to Claims 1-20, the Appellant respectfully submits that the Office Action has failed to show that Campion et al anticipates Claims 1, 9 and 15, from which Claims 2-8, 10-14 and 16-20 depend.

The Appellant respectfully appeals the rejection of claims 1-20 under 35 USC 102(b).

SUMMARY

In view of all of the above, it is respectfully submitted that the claims be allowed on appeal.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY



Signature

James E. Oehlenschlaeger

Typed or printed name

Registration No. 50,164

(513) 634-3447

Date: January 3, 2006

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CLAIMS APPENDIX

1. (original) A tampon applicator comprising:
an insertion member adapted to house an absorbent tampon and receive a plunger;
said insertion member having an outer surface and a fingergrip region disposed about said outer surface;
said fingergrip region comprising an indentation region having a depth dimension X;
said indentation region comprising raised portions having a height dimension Y; said height dimension Y being less than or equal to said depth dimension X.
2. (original) The tampon applicator according to Claim 1 wherein said tampon applicator is comprised of paper.
3. (original) The tampon applicator according to Claim 1 wherein said depth dimension X is from about 1 mm to about 10 mm.
4. (original) The tampon applicator according to Claim 1 wherein said height dimension Y is from about 0.1 mm to about 10 mm.
5. (original) The tampon applicator according to Claim 1 wherein the tampon applicator is comprised of plastic.
6. (original) The tampon applicator according to Claim 1 wherein the indentation region has a shape selected from the group consisting of oval, circular, rectangular, trapezoidal, triangular, hemispherical and mixtures thereof.
7. (original) The tampon applicator according to Claim 1 wherein the raised portions have a shape selected from the group consisting of ovals, circles, rectangles, trapezoids, triangles, cones, alphabet letters, and mixtures thereof.
8. (original) The tampon applicator according to Claim 1 wherein the raised portions are arranged in a pattern.

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9. (original) A tampon applicator comprising:
 - an insertion member adapted to house an absorbent tampon and receive a plunger;
 - said insertion member having an outer surface and a fingergrip region disposed about said outer surface;
 - said fingergrip region comprising an indentation region having a depth dimension X;
 - said indentation region comprising raised portions having a height dimension Y; said height dimension Y being less than said depth dimension X.
10. (original) The tampon applicator according to Claim 9 wherein said tampon applicator is comprised of paper.
11. (original) The tampon applicator according to Claim 9 wherein said depth dimension X is from about 2 mm to about 5 mm.
12. (original) The tampon applicator according to Claim 9 wherein said height dimension Y is from about 0.2 mm to about 5.0 mm.
13. (original) The tampon applicator according to Claim 9 wherein the raised portions are arranged in a pattern.
14. (original) The tampon applicator according to Claim 9 wherein the patterns are selected from the group consisting of flowers, ovals, circles, rectangles, trapezoids, triangles, cones, alphabet letters, and mixtures thereof.
15. (original) A tampon applicator comprising:
 - an insertion member adapted to house an absorbent tampon and receive a plunger;
 - said insertion member having an outer surface and a fingergrip region disposed about said outer surface;
 - said fingergrip region comprising an indentation region having a depth dimension X;
 - said indentation region comprising raised portions having a height dimension Y; said height dimension Y being less than or equal to said depth dimension X;
 - wherein said tampon applicator is comprised of paper.

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16. (original) The tampon applicator according to Claim 15 wherein said depth dimension X is from about 2.5 mm to about 3.5 mm.
17. (original) The tampon applicator according to Claim 15 wherein said height dimension Y is from about 0.5 mm to about 2.5 mm.
18. (original) The tampon applicator according to Claim 15 wherein the indentation region has a shape selected from the group consisting of oval, circular, rectangular, trapezoidal, triangular, hemispherical and mixtures thereof.
19. (original) The tampon applicator according to Claim 15 wherein the raised portions have a shape selected from the group consisting of ovals, circles, rectangles, trapezoids, triangles, cones, alphabet letters, and mixtures thereof.
20. (original) The tampon applicator according to Claim 15 wherein the raised portions are arranged in a pattern selected from the group consisting of flowers, ovals, circles, rectangles, trapezoids, triangles, cones, alphabet letters, and mixtures thereof.

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EVIDENCE APPENDIX

No evidence is being submitted with this Appeal Brief.

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RELATED PROCEEDINGS APPENDIX

No decisions have been rendered by a court or board in any proceeding identified pursuant to 37 C.F.R. 41.37 (c)(1)(ii).